



COURT OF MAGISTRATES (MALTA)

**MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 20 th September, 2011

Avviz Number. 261/2011

In the records of the Warrant of Seizure No. 1957/11

And

**In the records of Application No. 209/11VG in the
names:**

Professor Albert Fenech

Vs

**Michel Vat (I.D. Card No. 41236A) and Carla Winter
(I.D. Card No. 41235A)**

The Court,

After having considered the Application filed by Michel Vat, holder of Identity Card Number 41236A, by means of which he requests this Court to revoke the Warrant of Seizure No. 1957/11 in the names "*Professur Albert*

Fenech v. Michel Vat u Carla Winter” issued on the 1st July 2011, on the grounds set out in Section 836(1)(f) of Chapter 12 of the Laws of Malta, and further to condemn the Respondent, Professor Albert Fenech, to pay the penalty it may impose in terms of Section 836(8) of Chapter 12 of the Laws of Malta and to pay, in terms of Section 836(9) of Chapter 12 of the Laws of Malta, the expenses and damages suffered by him as a consequence of the issue of the above-mentioned Warrant of Seizure against him, since the Respondent’s claim as directed against him is malicious, frivolous and unjustified; and this under those conditions it might deem fit to impose;

After having considered the Reply filed by Professor Albert Fenech by means of which he opposes the requests made by the Applicant and submits that the same should be rejected, with costs against the Applicant, since the Applicant too is contractually bound towards him to pay the rent due for Apartment No.13, The Elms, Gorg Borg Olivier Street, Sliema, leased to him and Carla Winter;

After having examined the documents submitted by the Applicant together with his Application and the documents submitted by the Respondent together with his Reply;

After having heard testimony given by the Applicant during the sitting held on the 5th September 2011 and examined the documents submitted by him during his testimony, and after having heard testimony given by Carla Winter and the Respondent during the above-mentioned sitting of the 5th September 2011;

After having heard oral submissions by the lawyers of the parties;

Considers:

By means of this Application the Applicant is, amongst other things, requesting the Court to revoke the

precautionary Warrant of Seizure No. 1957/11 in the names “*Professur Albert Fenech v. Michel Vat u Carla Winter*” in so far as the said Warrant was issued against him, on the ground set out in Section 836(1)(f) of Chapter 12 of the Laws of Malta, that is *that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part, or that the precautionary act in whole or in part is no longer necessary or justifiable.*

The Applicant claims that since he has no contractual obligations towards the Respondent in so far as concerns the lease of Apartment No.13, The Elms, Gorg Borg Olivier Street, Sliema, and he does not owe him any rent for the lease of the said apartment, it is unreasonable for the said precautionary Warrant of Seizure to be kept in force against him. According to the Applicant since the lease agreement for the said apartment was signed by his partner, not wife, Carla Winter, it is Carla Winter who is solely and exclusively bound towards the Respondent for the payment of rent due for the lease of the apartment.

The Respondent on the contrary argues that, irrespective of the fact that the lease agreement pertinent to Apartment No.13, The Elms, Gorg Borg Olivier Street, Sliema, was signed only by Carla Winter and irrespective of the possibility that Carla Winter and the Applicant are not married, it was clearly their intention to together take the apartment on lease from him, consequently making them both contractually bound towards him for said lease, including the payment of the rent due.

In proceedings for the revocation of a precautionary warrant or order the Court is bound to examine matters put before it on a *prima facie* basis and this as clearly results from the wording of Section 836 of Chapter 12 of the Laws of Malta itself. This principle has been repeatedly confirmed by the Courts in a number of judgments amongst which the judgment in the names **Emanuel Sammut et v. Josephine Sammut et, Application No. 716/02, First Hall Civil Court, 5th June 2003** and the judgment in the names **Joseph Camilleri et**

v. Anthony Govè et, Application No. 286/01, First Hall Civil Court, 10th May 2001: *mid-disposizzjoni ta' l-istess artikolu 836 jidher li l-unika ezami li trid taghmel din il-Qorti huwa dak biss ta' prima facie, u dan ghaliex il-mertu kollu jigi investigat fil-kawza proprja bejn il-partijiet, u ghalhekk hemm limitazzjoni sinifikanti fl-ezami li trid taghmel il-Qorti f'dan l-istadju u dan tenut kont li hawn si tratta dejjem ta' procedura preliminari, li ghad qed tistenna l-ezitu finali tal-kawza proprja.*

Considering matters on a *prima facie* basis does not however mean that the Court is to consider matters put before it in a superficial manner to the detriment of the proper administration of justice.

As already pointed out above the Applicant is requesting the revocation of the precautionary Warrant of Seizure No. 1957/11 in so far as issued against him, on the basis of the argument that since the lease agreement for Apartment No.13, The Elms, Gorg Borg Olivier Street, Sliema, was signed solely by Carla Winter, he personally has no contractual obligations towards the Respondent. The said lease agreement, submitted by the Applicant as document Doc. "MV" together with his Application¹, was indeed signed only by Carla Winter however, were the Court to take only this fact into account in its considerations as to whether the request by the Applicant for the revocation of the precautionary Warrant of Seizure No. 1957/11 is justified or not, it would not be considering matters put before it on a *prima facie* basis but in a superficial manner.

From testimony given by the Applicant, Carla Winter and the Respondent during the sitting held on the 5th September 2011 and from the exchange of correspondence between the same said persons submitted by the Respondent together with his Reply, it is *prima facie* evident that it was **their** intention, that is Carla Winter **and** the Applicant, to lease Apartment No.13, The Elms, Gorg Borg Olivier Street, Sliema, from the

¹ Folio 3 to 5 of the Records.

Respondent, which intention consequently gave rise to contractual rights and obligations in both Carla Winter **and** the Applicant towards the Respondent, even though the lease agreement was signed only by Carla Winter and she and the Applicant are not married.

It is an established principle under Maltese Law that an individual who contracts in his own name generally binds only himself **unless** he expressly indicates that he is contracting in someone else's name or if he does not so expressly indicate, the other contracting party has reason to believe that he is contracting in some one else's name – *hija haga minn lewn id-dinja li bniedem normalment jikkontratta ghalih innisfsu sakemm ma jindikax li qieghed jikkontratta f'isem haddiehor jew **jekk dan ma jindikax espressament, il-konraent l-iehor ikun ragonevolment jaf li jkun qieghed jikkontratta f'isem haddiehor**².*

The Court is of the opinion that in the present case, even though Carla Winter did not necessarily expressly indicate to the Respondent that though signing the lease agreement in her own name she was binding both herself and the Applicant towards him, there are sufficient facts to show that the Respondent had grounds to reasonably understand and believe that though signing the lease agreement in her name, Carla Winter was effectively binding both herself and the Applicant towards him.

From testimony given by the Applicant and Carla Winter it has emerged that they are both currently residing in Malta and when a little over two years ago, they were looking for a residence they viewed the apartment owned by the Respondent as their potential home. Prior to the signing of the lease agreement they viewed the apartment more than once and on these occasions they were always together. They also discussed matters with the Respondent together and they always presented themselves to him, even after the signing of the lease

² Frank Cilia noe v. Charles Scicluna, Commercial Court 27th April 1992. Emphasis by the Court.

agreement³, as a couple, though not necessarily as a married couple, acting together and not one distinctly from the other⁴.

The Applicant tries to obviate the legal implications of his and Carla Winter's attitude and intentions towards the Respondent by claiming that since he and Carla Winter are not married they are not bound by the principles which regulate the matrimonial regime in Malta, and that Carla Winter could have never bound him towards the Respondent since between them there exists the separation of estates, as results from the Domestic Partnership Agreement submitted by him and marked as document Doc. "GV2".

Whilst agreeing with the Applicant that he and Carla Winter are not subject to the principles which regulate the matrimonial regime in Malta and while acknowledging that the Domestic Partnership Agreement between them provides that *there is not to be any community property in any way between the domestic partners*⁵, the Court points out that the said agreement also provides that *the household expenses, including the costs of the care and upbringing of the children the domestic partners have together, the interest on debts incurred with respect to the home they live in together, and of the household property and of all the day-to-day expenditures that are part of the joint living pattern of the domestic partners, are to be paid by both domestic partners proportionally to each of their incomes from their salaries, and if their salaries are inadequate, the incomes from each of their capital*⁶. This provision essentially contradicts the Applicant's claims since in reality it confirms that independently of what might appear on paper – that is the lease agreement with the Respondent – in so far as concerns domestic issues, including *the home they live in*, the Applicant and Carla Winter always intended to act together and not one

³ Vide the exchange of correspondence between the Applicant and Carla Winter and the Respondent, submitted by the Respondent together with his Reply.

⁴ Vide testimony by the Applicant and Carla Winter given during the sitting held on the 5th September 2011.

⁵ Section 1- Exclusion of Community Property.

⁶ Section 3(1) – Household expenses/taxes.

independently of the other. Therefore though signing in her name, Carla Winter intended to bind also the Applicant towards the Respondent.

Further proof that it was their intention to be both bound towards the Respondent for the lease of the apartment results from their acts, particularly the Applicant, following the signing of the lease agreement.

The Applicant confirmed that save for the last four months of the lease the monthly rent of €2,300 was always paid by him directly to the Respondent from his personal account. Even though he insists that these payments were being effected on behalf of Carla Winter, the Court cannot consider such statement to be truthful.

First of all from the exchange of correspondence between the Applicant and Carla Winter and the Respondent, submitted by the Respondent together with his Reply, the Applicant never indicated that he was acting in representation of Carla Winter. On the contrary from said correspondence it clearly results that he and Carla Winter always acted jointly towards the Respondent. Secondly, it is rather strange that whilst claiming to act in representation of Carla Winter, the Applicant never asked the Respondent to issue a receipt for payments received, either in his name on behalf of Carla Winter or directly in the name of Carla Winter.

Had the Applicant really and truly been effecting payments to the Respondent on behalf of Carla Winter and not in their joint name, it would undoubtedly have been in his primary interest to request the issue of such a receipt, both for accountability purposes between him and Carla Winter in view of the Domestic Partnership Agreement existing between them and for the clear indication of who really is bound towards the Respondent for the lease of the apartment since the electronic payment transaction between the Applicant and the Respondent could of itself be considered to constitute a receipt issued in favour of the Applicant himself thus giving him legal title over the apartment in question.

In the light of the above, the Respondent was therefore *prima facie* justified in requesting and obtaining the issue of a precautionary Warrant of Seizure against both Carla Winter and the Applicant.

The Applicant further states that the precautionary Warrant of Seizure No. 1957/11 should be revoked in so far as it has been issued against him because the execution of the said warrant on his assets is prejudicial to him. The Court however points out that apart from that concluded above, it is an established principle under Maltese Law that the claim that a precautionary warrant is prejudicial to the indicated debtors is of itself not a valid reason for the revocation of the said precautionary warrant – *il-pretensjoni li l-mandat in kwestjoni hu ta' pregudizzu lir-rikorrenti mhux raguni valida ghala l-mandat ghandu jigi revokat*⁷.

In the light of the above the request by the Applicant for the revocation of the precautionary Warrant of Seizure No. 1957/11 in the names “*Professur Albert Fenech v. Michel Vat u Carla Winter*” in so far as it has been issued against him is clearly not justified and must therefore be rejected.

Apart from the revocation of the said precautionary Warrant of Seizure in so far as it has been issued against him, the Applicant also requests that the Court condemn the Respondent to pay the penalty it may impose in terms of Section 836(8) of Chapter 12 of the Laws of Malta and to pay, in terms of Section 836(9) of Chapter 12 of the Laws of Malta, the expenses and damages suffered by him as a consequence of the issue of the above-mentioned Warrant of Seizure against him, since the Respondent’s claim as directed against him is malicious, frivolous and unjustified.

As clearly shown above the Respondent’s claim as directed against the Applicant is not, on a *prima facie*

⁷ Taormina Holdings Limited v. Biochemicals International Limited, Application No. 715/03, decreed by the First Hall Civil Court on the 30th October 2003.

Informal Copy of Judgement

basis, malicious, frivolous and unjustified and therefore there subsist no grounds for the application of Section 836(8) and (9) of Chapter 12 of the Laws of Malta against the Respondent. Thus, this request submitted by the Applicant too is to be rejected.

On the basis of the above-mentioned reasons the Court rejects the requests made by the Applicant in his Application filed on the 15th July 2011. The costs of these proceedings are to be borne by the Applicant.

< Final Judgement >

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